

REMARKS

Applicant has cancelled all of the claims that were rejected as lacking support in the originally filed application, now embodied in U.S. Patent No. 6,788,414 having a filing date of July 28, 2000 which claims the benefit of a provisional application filed September 9, 1999. In the Examiner's Action, the Examiner acknowledges that claims 24, 27 and 34 are entitled to the earlier filing dates of the parent application; thus Doolen (U.S. Patent No. 6,462,816) is not proper prior art against those claims under 35 U.S.C. § 102(e). A rejection of the other claims for which Doolen was urged by the Examiner as a proper reference is rendered moot by cancellation of claims 25, 26, 28-31 and 33. Claims remaining then for consideration here are claims 24, 27 and 34 of which there is adequate support. Since this Amendment After Final Rejection only cancels claims, it simplifies the issues for purposes of appeal in the event that the Examiner does not view this amendment as placing the remaining claims 24, 27 and 34 in condition for allowance.

The Examiner has rejected claims 24, 27 and 34 as anticipated by Gilby (U.S. Patent No. 5,900,934). As Applicant pointed out in his remarks, Gilby was distinguished in the parent case; and Gilby does not anticipate or render obvious the current claims. Gilby does not anticipate because Gilby does not show what is claimed. Nor does Gilby make obvious the invention under § 103(a) because of the difference in claimed systems.

Yeung, claims 24, 27 and 34 shows a device or system for optically analyzing an array of multiple samples simultaneously by irradiating the array with light and detecting light from the samples with a detection means positioned apart from the array of multiple containers, Yeung et al. uses the system to measure absorbance of the sample ... not fluorescence as Gilby. The

Examiner has admitted such in the Actions on the parent case and that distinction still holds for the present case.

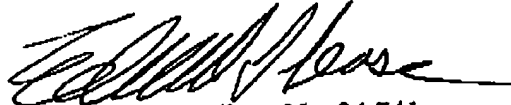
In spite of this, the Office contends that it was known in art that the samples and the capillary tubes could be tested by measuring absorption, citing Gilby et al. The Office concludes that it would be obvious and/or anticipated for the claims 24, 27 and 31 of Yeung to measure absorption as allegedly taught by Gilby. Yet nowhere has the Office pointed to a teaching or suggestion to modify the system of Gilby as proposed to arrive at claims 24, 27 and 31. Furthermore, adopting the system of Gilby who measures fluorescence to work for absorbance would render the system of Yeung unsuitable for its intended purpose. See, e.g., In re Gordin et al., 733 F.2d 900, (C.A.F.C. 1984); In re Fritch, 972 F.2d 1260 (Fed. Cir. 1992); and MPEP § 2143.01. A system that measures fluorescence requires a different optical geometry from that defined in the system of claims 24, 27 and 31 for measuring absorption.

In view of the foregoing, as in the parent case, the present invention cannot be said to be obvious in view of Gilby et al. Applicants have made a sincere effort to simplify the issues, canceling the claims whose filing date was contested, leaving only those for which certainty of disclosure is present. It is submitted that claims 24, 27 and 31 are allowable.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



EDMUND J. SEASE, Reg. No. 24,741
MCKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 22885

Attorneys of Record

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